

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ANTHONY PERRI,

Plaintiff,

-against-

**ORDER**  
**06 CV 403 (CBA)(LB)**

JOHN DOE, Captain; SERGEANT  
BARRITEAU; SUSAN SAVIANO;  
JOSEPH DITUCCI;  
and THE CITY OF NEW YORK,

Defendants.

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**BLOOM, United States Magistrate Judge:**

On March 11, 2010, the Court denied the parties' cross motions for summary judgment without reaching the merits of plaintiff's claims, or defendants' motion. (Document 179.) The Court must first determine plaintiff's capacity to bring suit; if plaintiff is not competent to bring this civil action on his own behalf, the Court shall formally appoint a guardian *ad litem*.

To determine plaintiff's capacity to sue, the Court has arranged to retain Dr. Merrill Rotter, to conduct a psychiatric evaluation of plaintiff at his office.<sup>1</sup> Plaintiff is hereby ordered to appear for his psychiatric evaluation on October 8, 2010 at 1:00 p.m. at 932 Sheridan Avenue, Bronx, New York 10451. Plaintiff is warned that if he fails to timely appear for his examination on October 8, 2010 at 1:00 p.m. I will recommend that his case should be dismissed.<sup>2</sup> If plaintiff cannot attend his examination on this date, he must inform the Court in writing no later than

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<sup>1</sup> The Court has obtained approval to pay for the costs of this examination through the Eastern District Civil Litigation Fund, which has very limited resources. If plaintiff fails to appear at his examination, the Court will be charged for plaintiff's failure to appear and the Doctor's preparation costs. Therefore, if plaintiff fails to appear for his appointment with Dr. Rotter, the Court shall dismiss plaintiff's actions.

<sup>2</sup> Where a plaintiff fails to cooperate with the Court's efforts to determine his or her capacity to bring suit, the Court is within its discretion to dismiss the case without prejudice. Cox v. AMEX, No. 95 Civ. 9717, 2002 U.S. Dist. LEXIS 11093 (S.D.N.Y. June 21, 2002)(citation omitted).

September 17, 2010, and provide alternate dates for his examination during the month of October. The Court will then confirm the alternate date with Dr. Rotter, and issue a new order. If he does not request an alternate date in writing by September 17, 2010, the Court will not excuse plaintiff's failure to timely appear and plaintiff will not be afforded another chance to comply with this Order.

SO ORDERED.

/S/

  
LOIS BLOOM  
United States Magistrate Judge

Dated: August 31, 2010  
Brooklyn, New York

Cc: *(by FedEx and U.S. Mail)*  
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